

§ 674.44

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seek deferment, postponement, or cancellation of the loan.

(e)(1) An institution that accelerates a loan as provided in § 674.31 (i.e., makes the entire outstanding balance of the loan, including accrued interest and any applicable late charges, payable immediately) shall—

(i) Provide the borrower, at least 30 days before the effective date of the acceleration, written notice of its intention to accelerate; and

(ii) Provide the borrower on or after the effective date of acceleration, written notice of the date on which it accelerated the loan and the total amount due on the loan.

(2) The institution may provide these notices by including them in other written notices to the borrower, including the final demand letter.

(f) If the borrower does not respond to the final demand letter within 30 days from the date it was sent, the institution shall attempt to contact the borrower by telephone before beginning collection procedures.

(g)(1) An institution shall ensure that any funds collected as a result of billing the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(Approved by the Office of Management and Budget under control number 1845–0023)

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 53 FR 49147, Dec. 6, 1988; 57 FR 32346, July 21, 1992; 59 FR 61412, Nov. 30, 1994; 64 FR 58315, Oct. 28, 1999; 67 FR 67077, Nov. 1, 2002]

§ 674.44 Address searches.

(a) If mail, other than unclaimed mail, sent to a borrower is returned undelivered, an institution shall take steps to locate the borrower. These steps must include—

(1) Reviews of records in all appropriate institutional offices;

(2) Reviews of telephone directories or inquiries of information operators in the locale of the borrower's last known address; and

(3) If, after following the procedures in paragraph (a) of this section, an institution is still unable to locate a borrower, the institution may use the Internal Revenue Service skip-tracing service.

(b) If an institution is unable to locate a borrower by the means described in paragraph (a) of this section, it shall—

(1) Use its own personnel to attempt to locate the borrower, employing and documenting efforts comparable to commonly accepted commercial skip-tracing practices; or

(2) Refer the account to a firm that provides commercial skip-tracing services.

(c) If the institution acquires the borrower's address or telephone number through the efforts described in this section, it shall use that new information to continue its efforts to collect on that borrower's account in accordance with the requirements of this subpart.

(d) If the institution is unable to locate the borrower after following the procedures in paragraphs (a) and (b) of this section, the institution shall make reasonable attempts to locate the borrower at least twice a year until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61412, Nov. 30, 1994]

§ 674.45 Collection procedures.

(a) The term “collection procedures,” as used in this subpart, includes that series of more intensive efforts, including litigation as described in § 674.46, to recover amounts owed from defaulted borrowers who do not respond satisfactorily to the demands routinely made as part of the institution's billing procedures. If a borrower does not satisfactorily respond to the final demand

letter or the following telephone contact made in accordance with § 674.43(f), the institution shall—

(1) Report the account as being in default to any one national credit bureau; and

(2)(i) Use its own personnel to collect the amount due; or

(ii) Engage a collection firm to collect the account.

(b)(1) An institution must report to any national credit bureau to which it reported the default, according to the reporting procedures of the national credit bureau, any changes to the account status of the loan.

(2) The institution must resolve, within 30 days of its receipt, any inquiry from any credit bureau that disputes the completeness or accuracy of information reported on the loan.

(c)(1) If the institution, or the firm it engages, pursues collection activity for up to 12 months and does not succeed in converting the account to regular repayment status, or the borrower does not qualify for deferment, postponement, or cancellation on the loan, the institution shall—

(i) Litigate in accordance with the procedures in § 674.46;

(ii) Make a second effort to collect the account as follows:

(A) If the institution first attempted to collect the account using its own personnel, it shall refer the account to a collection firm.

(B) If the institution first attempted to collect the account by using a collection firm, it shall either attempt to collect the account using institutional personnel, or place the account with a different collection firm; or

(iii) Submit the account for assignment to the Secretary in accordance with the procedures set forth in § 674.50.

(2) If the collection firm retained by the institution does not succeed in placing an account into a repayment status described in paragraph (c)(1) of this section after 12 months of collection activity, the institution shall require the collection firm to return the account to the institution.

(d) If the institution is unable to place the loan in repayment as described in paragraph (c)(1) of this section after following the procedures in paragraphs (a), (b), and (c) of this sec-

tion, the institution shall continue to make annual attempts to collect from the borrower until—

(1) The loan is recovered through litigation;

(2) The account is assigned to the United States; or

(3) The account is written off under § 674.47(g).

(e)(1) Subject to § 674.47(d), the institution shall assess against the borrower all reasonable costs incurred by the institution with regard to a loan obligation.

(2) The institution shall determine the amount of collection costs that shall be charged to the borrower for actions required under this section, and §§ 674.44, 674.46, 674.48, and 674.49, based on either—

(i) Actual costs incurred for these actions with regard to the individual borrower's loan; or

(ii) Average costs incurred for similar actions taken to collect loans in similar stages of delinquency.

(3) For loans placed with a collection firm on or after July 1, 2008, reasonable collection costs charged to the borrower may not exceed—

(i) For first collection efforts, 30 percent of the amount of principal, interest, and late charges collected;

(ii) For second and subsequent collection efforts, 40 percent of the amount of principal, interest, and late charges collected; and

(iii) For collection efforts resulting from litigation, 40 percent of the amount of principal, interest, and late charges collected plus court costs.

(4) The Fund must be reimbursed for collection costs initially charged to the Fund and subsequently paid by the borrower.

(f)(1) An institution shall ensure that any funds collected from the borrower are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

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(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(g) *Preemption of State law.* The provisions of this section preempt any State law, including State statutes, regulations, or rules, that would conflict with or hinder satisfaction of the requirements or frustrate the purposes of this section.

(h) As part of the collection activities provided for in this section, the institution must provide the borrower with information on the availability of the Student Loan Ombudsman's office.

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(Authority: 20 U.S.C. 424, 1087cc, 1091a)

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§ 674.46 Litigation procedures.

(a)(1) If the collection efforts described in § 674.45 do not result in the repayment of a loan, the institution shall determine at least once every two years whether—

(i) The total amount owing on the borrower's account, including outstanding principal, accrued interest, collection costs and late charges on all of the borrower's Federal Perkins, NDSL and National Defense Student Loans held by that institution, is more than \$500;

(ii) The borrower can be located and served with process;

(iii)(A) The borrower has sufficient assets attachable under State law to satisfy a major portion of the outstanding debt; or

(B) The borrower has income from wages or salary which may be garnished under applicable State law sufficient to satisfy a major portion of the debt over a reasonable period of time;

(iv) The borrower does not have a defense that will bar judgment for the institution; and

(v) The expected cost of litigation, including attorney's fees, does not exceed the amount which can be recovered from the borrower.

(2) The institution shall sue the borrower if it determines that the condi-

tions in paragraph (a)(1) of this section are met.

(3) The institution may sue a borrower in default, even if the conditions in paragraph (a)(1) of this section are not met.

(b) The institution shall assess against and attempt to recover from the borrower—

(1) All litigation costs, including attorney's fees, court costs and other related costs, to the extent permitted under applicable law; and

(2) All prior collection costs incurred and not yet paid by the borrower.

(c)(1) An institution shall ensure that any funds collected as a result of litigation procedures are—

(i) Deposited in interest-bearing bank accounts that are—

(A) Insured by an agency of the Federal Government; or

(B) Secured by collateral of reasonably equivalent value; or

(ii) Invested in low-risk income-producing securities, such as obligations issued or guaranteed by the United States.

(2) An institution shall exercise the level of care required of a fiduciary with regard to these deposits and investments.

(d) If the institution is unable to collect the full amount owing on the loan after following the procedures set forth in §§ 674.41 through 674.46, the institution may—

(1) Submit the account to the Secretary for assignment in accordance with the procedures in § 674.50; or

(2) With the Secretary's approval, refer the account to the Department for collection.

(Authority: 20 U.S.C. 424, 1087cc)

[52 FR 45555, Nov. 30, 1987, as amended at 59 FR 61412, 61415, Nov. 30, 1994; 67 FR 67077, Nov. 1, 2002]

§ 674.47 Costs chargeable to the Fund.

(a) *General: Billing costs.* (1) Except as provided in paragraph (c) of this section, the institution shall assess against the borrower, in accordance with § 674.43(b)(2) the cost of actions taken with regard to past-due payments on the loan.

(2) If the amount recovered from the borrower does not suffice to pay the amount of the past-due payments and